

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Kansas City Power & Light)
Company’s Notice of Intent to File an)
Application for Authority to Establish a) **File No. EO-2015-0240**
Demand-Side Programs Investment Mechanism)

In the Matter of KCP&L Greater Missouri Operations)
Company’s Notice of Intent to File an)
Application for Authority to Establish a) **File No. EO-2015-0241**
Demand-Side Programs Investment Mechanism)

POST-HEARING BRIEF OF THE OFFICE OF PUBLIC COUNSEL

COMES NOW the Office of the Public Counsel (“Public Counsel” or “OPC”) and presents its post-hearing brief as follows:

On November 23, 2015, the Missouri Public Service Commission’s Staff (“Staff”), Kansas City Power & Light Company (“KCPL”), KCP&L Greater Missouri Operations Company (“GMO”), Public Counsel, National Housing Trust, West Side Housing Organization, Natural Resources Defense Council, Earth Island Institute d/b/a Renew Missouri, the Missouri Department of Economic Development – Division of Energy, and United for Missouri, Inc. submitted a *Non-unanimous Stipulation and Agreement Resolving MEEIA Filings* (“Stipulation and Agreement”) (Doc. No. 58 in EO-2015-0241; Doc. No. 59 in EO-2015-0240). The terms of the Stipulation and Agreement, taken together, represent a reasonable resolution that will allow GMO and KCPL to implement utility sponsored energy efficiency programs under the supervision of the Commission pursuant to the Missouri Energy Efficiency Investment Act (“MEEIA”). Mo. Rev. Stat. § 393.1075.

In the Stipulation and Agreement, the signatories agreed to support a variance from Commission rule 4 CSR 240-20.094(5) for KCPL and GMO. During the hearing, whether a

variance for 4 CSR 240-20.094(5) should be extended to other Missouri utilities was discussed (Tr. Vol. 3, p. 164). Importantly, the Commission cannot issue an order extending the variance to all Missouri utilities. Such an order would, in effect, change or repeal the rule without following the rulemaking process required by Chapter 536. *See* Admin. Proc. Act, Mo. Rev. Stat. §536.010 et seq. (2000). Within that chapter, § 536.010(6) defines a “rule” to include “each agency statement of general applicability that implements, interprets, or prescribes law or policy[.]” Mo. Rev. Stat. § 536.010(6). A “[r]ulemaking involves the formation of a policy or interpretation which the agency will apply in the future to all persons engaged in the regulated activity.” *Mo. Soybean Ass’n v. Mo. Clean Water Comm’n*, 102 S.W.3d 10, 23 (Mo. 2003). Agencies cannot engage in this type of rulemaking by an adjudicated order. *Greenbriar Hills Country Club v. Director of Revenue*, 47 S.W.3d 346, 357 (Mo. banc 2001). Rules or amendments made in contravention of the rulemaking process are void. Mo. Rev. Stat. § 536.021.

To be clear, the signatories are not asking the Commission to extend the terms of the Stipulation and Agreement to other Missouri utilities. The terms of the Stipulation and Agreement resulted from extensive negotiations and interdependent concessions by the parties to resolve the MEEIA applications of KCPL and GMO – not any other utility.

WHEREFORE, the Office of the Public Counsel submits its post-hearing brief and requests that the Commission issue an order adopting the terms of the Non-unanimous Stipulation and Agreement Resolving MEEIA Filings filed on November 23, 2015.

Respectfully,
OFFICE OF THE PUBLIC COUNSEL

By: /s/ Tim Opitz
Tim Opitz
Senior Counsel
Missouri Bar No. 65082
P. O. Box 2230
Jefferson City MO 65102
(573) 751-5324
(573) 751-5562 FAX
Timothy.opitz@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 29th day of January 2016:

Missouri Public Service Commission

Bob Berlin
P.O. Box 360
Jefferson City, MO 65102
Bob.Berlin@psc.mo.gov

Missouri Public Service Commission

Department Staff Counsel
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Renew Missouri

Andrew J Linhares
910 E Broadway, Ste. 205
Columbia, MO 65201
Andrew@renewmo.org

Union Electric Company

James B Lowery
P.O. Box 918
Columbia, MO 65205-0918
lowery@smithlewis.com

Union Electric Company

Matthew R Tomc
1901 Chouteau
St. Louis, MO 63166
AmerenMOService@ameren.com

Union Electric Company

Wendy Tatro
1901 Chouteau Avenue
St. Louis, MO 63103-6149
AmerenMOService@ameren.com

United for Missouri

David C Linton
314 Romaine Spring View
Fenton, MO 63026
Jdlinton@reagan.com

West Side Housing Organization

Andrew J Linhares
910 E Broadway, Ste. 205
Columbia, MO 65201
Andrew@renewmo.org

National Housing Trust

Andrew J Linhares
910 E Broadway, Ste. 205
Columbia, MO 65201
Andrew@renewmo.org

Natural Resources Defense Council

Henry B Robertson
319 N. Fourth St., Suite 800
St. Louis, MO 63102
hrobertson@greatriverslaw.org

Brightergy, LLC

David Woodsmall
807 Winston Court
Jefferson City, MO 65101
david.woodsmall@woodsmalllaw.com

Brightergy, LLC

Andrew Zellers
1712 Main Street, 6th Floor
Kansas City, MO 64108
andyzellers@brightergy.com

Kansas City Power & Light Company

Robert Hack
P.O. Box 418679
Kansas City, MO 64141-9679
rob.hack@kcpl.com

Kansas City Power & Light Company

Roger W Steiner
P.O. Box 418679
Kansas City, MO 64105-9679
roger.steiner@kcpl.com

Missouri Division of Energy

Alexander Antal
P.O. Box 1157
Jefferson City, MO 65102
Alexander.Antal@ded.mo.gov

**Missouri Industrial Energy Consumers
(MIEC)**

Edward F Downey
221 Bolivar Street, Suite 101
Jefferson City, MO 65101
efdowney@bryancave.com

**Missouri Industrial Energy Consumers
(MIEC)**

Diana M Vuylsteke
211 N. Broadway, Suite 3600
St. Louis, MO 63102
dmvuylsteke@bryancave.com

/s/ Tim Opitz